

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1344 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RASIDBHAI @ ABDULRASID ABDULGANI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR. S.S. Patel for Respondent No. 1
RULE SERVED for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/06/1999

ORAL JUDGEMENT :

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 6th February, 1999 made by the District Magistrate, Kheda under the powers conferred upon him under sec.3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

3. The impugned order is challenged on the only ground that the representation made against the order of detention by the son of the petitioner to the District Magistrate has not been decided as yet. It is contended that the son of the petitioner had sent an undated representation to the District Magistrate by Registered Post Acknowledgment Due. Said representation was duly delivered in the office of the District Magistrate, the acknowledgment whereof was received back on 20th February 1999. The learned Assistant Government Pleader, Shri Patel concedes that the said representation was received in the office of the District Magistrate on 19th February 1999 and since the order of detention was already approved by the Government on 17th February 1999, the representation was forwarded to the State Government on 20th February 1999. It is not known as to whether said representation was received by the Government or not. However, it is undisputed that the said representation has not been decided by the State Government though a subsequent representation made on 25th February 1999 was considered and rejected by the State Government on 4th March 1999.

4. In view of the prevalent law, the action of the State Government in not considering and deciding the representation made against the order of detention requires to be held to be arbitrary. Thereby the Government has deprived the petitioner of his right to representation, which should vitiate the continued detention of the petitioner.

5. The petition is, therefore, allowed. The impugned order dated 6th February 1999, Annexure 'A' to the petition, is quashed and set aside. Rule is made absolute. The petitioner, unless his detention is required in any other case, be released forthwith.

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